

TESTIMONY ON

**HEARING ON REASONABLE CONTRACTS OR ARRANGEMENTS
FOR WELFARE PLANS UNDER ERISA SECTION
408(b)(2) – WELFARE PLAN FEE DISCLOSURE**

**By Eric Keller of Paul, Hastings, Janofsky & Walker LLP
On behalf of
US CHAMBER OF COMMERCE**

**Before the
UNITED STATES DEPARTMENT OF LABOR
EMPLOYEE BENEFITS SECURITY ADMINISTRATION**

December 7, 2010

Good morning, thank you for the opportunity to testify before you today on plan fee disclosure in welfare plans. My name is Eric Keller, Partner and employee benefits attorney at Paul, Hastings, Janofsky & Walker LLP in Washington, DC. I am pleased to be able to testify today on behalf of the U.S. Chamber of Commerce where I am a member of its Employee Benefits Committee. The Chamber is the world's largest business federation, representing more than three million businesses and organizations of every size, sector and region.

The Chamber and its members appreciate the concern for greater transparency in plan fees and the effort to address these concerns. The Chamber fully supports transparency of expenses and encourages appropriate disclosure of plan fees. However, we do not believe that the disclosures required for individual account and defined benefit retirement plans are necessary for welfare plans.

My testimony today will focus on two areas of concern: (1) There is no demonstrated need for the application of fee disclosure rules to welfare plans and (2) promulgating fee disclosure rules for welfare plans will create an unnecessary burden on employers and will increase plan costs, while providing little to no benefits for plan participants.

Our first concern is the lack of a need for additional regulation in this area. We are not aware of any substantive record demonstrating the need for plan fee disclosure in the welfare benefits marketplace. As a matter of fact, in 2004, the ERISA Advisory Council studied welfare plan Form 5500 issues and did not uncover any glaring deficiencies in the ability of plan sponsors to understand welfare plan costs even with the very limited role that the Form 5500 plays in revealing welfare plan costs¹. The Council even raised the option of completely eliminating the Form 5500 requirements for welfare plans. Thus, it appears that plan sponsors are currently well-informed of welfare plan costs and additional regulation would be unnecessary.

Furthermore, the differences in operation between welfare and retirement plans make additional disclosures for plan sponsors unnecessary. The majority of contracts and policies for welfare benefit plans or services are between a service provider and a plan sponsor, not a plan. So long as the plan sponsor does not pay fees from plan assets, Section 408(b)(2) does not apply. Moreover, in a fully insured plan, the premiums are fully disclosed to plan sponsors and are regulated by state insurance law and indirectly by the new medical loss ratio provisions of the Patient Protection and Affordable Care Act. Commissions and other indirect compensation paid to brokers are already fully disclosed on Schedule A of Form 5500. Service providers to plan sponsors of self-funded welfare plans disclose extensive fee and compensation information at multiple stages of the bidding and contracting process – for example, in response to requests for proposals issued by the plan sponsor, as part of the contract negotiations, and in post-contract reporting and auditing requirements. Consequently, we believe that the way fees are paid and disclosed in a welfare plan does not require the additional disclosure regulations that apply to individual account and defined benefit retirement plans.

¹ Final Report of the 2004 ERISA Advisory Council Working Group, Health and Welfare Form 5500 Requirements, November 10, 2004.

Our second concern with the application of the plan fee disclosure rules to welfare plan deals with the current environment surrounding health care plans. As you are aware, the passage of the Patient Protection and Affordable Care Act has created a myriad of issues with which the sponsors of health plans are now contending. Attaching additional regulatory requirements will be unnecessarily burdensome for plan sponsors while providing little or no benefits for them.

In addition, the costs incurred by insurers and other service providers to comply with any disclosure requirements promulgated under Section 408(b)(2) will undoubtedly be passed on to plan sponsors and participants in the form of premium increases and other increased welfare plan costs and expenses.

In conclusion, we do not believe that is appropriate or necessary to apply plan fee regulations to welfare plans. Thank you again for the opportunity to share the thoughts and concerns of the Chamber with you this morning. If you have any questions, I am happy to answer them.